



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. Tenant EF (the tenant) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant gave undisputed sworn testimony supported by written evidence that they sent the landlord a copy of their dispute resolution hearing package and written evidence package by registered mail on May 30, 2019. They also provided copies of the Canada Post Tracking Number and Customer Receipt. The tenant gave sworn testimony and written evidence that the landlord had refused to accept this registered mailing and the material had been returned to the tenants. On the basis of this undisputed evidence and in accordance with sections 88, 89 and 90 of the *Act*, I find that these packages were deemed served to the landlord on June 4, 2019, the fifth day after their mailing.

At the hearing, the tenant said that they were withdrawing their request for the return of their personal property as it appeared that the landlord had already discarded these possessions. This portion of the tenants' application was withdrawn by the tenant at this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On July 9, 2013, the parties entered into a month-to-month Residential Tenancy Agreement (the Agreement), which enabled the tenants to move into this rental unit that day. Although the initial monthly rent was set at \$1,000.00, payable in advance on the first of each month, the tenant gave undisputed sworn testimony that the monthly rent had increased to \$1,300.00 by the time the tenants vacated these premises on May 4, 2019. According to the terms of the Agreement, the tenants were also responsible for 30% of the hydro costs and 40 % of the gas costs for this property. On July 13, 2013, the tenants paid a \$500.00 security deposit to the landlord, a deposit still held by the landlord.

The tenants entered into written evidence a copy of a handwritten note from the landlord dated April 9, 2014, which the tenant maintained should have read as April 9, 2019. This note advised the tenants that they would have to vacate the rental unit by June 30, 2018, as the landlord needed to use this space. Although the tenants realized that this was not on the required Residential Tenancy Branch forms, they considered the notice from the landlord to have given them 30 days to vacate the rental unit, which enabled them to remain there until at least May 9, 2019. When the tenants found alternate accommodations, they claim to have asked the landlord for permission to remain in the rental unit until May 4, 2019, without paying rent for the first four days of May. Although the tenant maintained that the landlord had initially agreed to let them stay in the rental unit for the four days of May without paying rent, later the landlord advised them that they would need to pay rent at hotel rates for the first four days of May. Without providing the tenants with any legal Notice to End Tenancy on approved Residential Tenancy Branch forms, without obtaining an Order of Possession, without obtaining a

Writ of Possession from the Supreme Court of British Columbia, and without subsequently enlisting the services of a court appointed bailiff, the tenants maintained that the landlord advised them that the landlord would be changing the locks on the rental unit if they were not out of the rental unit by May 4, 2019.

The tenants' application for a monetary award of \$500.00 was for the return of their security deposit. The tenant gave undisputed sworn testimony that the landlord did not undertake any joint move-in condition inspection when this tenancy began. On April 30, 2019, they provided the landlord with their forwarding address. They entered into written evidence a copy of their provision of the forwarding address to the landlord. The tenant said that the landlord has not returned their security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after May 4, 2019 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of the security deposit for this tenancy, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In this case, I also note that there is undisputed sworn testimony that the landlord did not conduct a joint move-in condition inspection. As such, the landlord's right to apply to retain the security deposit was extinguished by sections 23 and 24(2) of the *Act* from the beginning of this tenancy.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the value of their \$500.00 security deposit with interest calculated on the original amount only. No interest is payable.

Having been successful in this application, I find further that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary Order under the following terms, which allows the tenants to recover double the value of their security deposit plus the filing fee for their application:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$500.00 x 2 = \$1,000.00)	\$1,000.00

Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,100.00

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenants' application for the return of their personal property is withdrawn,

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 09, 2019

Residential Tenancy Branch